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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20006

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MAR 21 1995

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20006

In the Matter of)
Streamlining the Commission's Antenna)
Structure Clearance Procedure)
and)
Revision of Part 17 of the Commission's)
Rules Concerning Construction, Marking,)
and Lighting of Antenna Structures)

WT Docket No. 95-5

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COMMENTS OF MOTOROLA

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Dated: March 21, 1995

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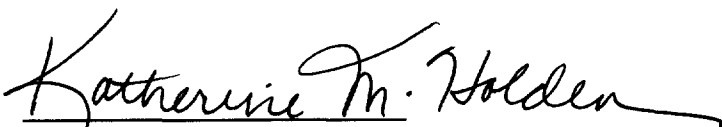
WT Docket No. 95-5

COMMENTS OF MOTOROLA

Motorola, by its attorneys, hereby files its comments in response to the *Notice* in the above-captioned docket. Motorola strongly supports the Commission's proposal to streamline its antenna clearance procedures for structures that require FAA notification. Motorola believes, however, that the proposed rules can and should be further simplified for the benefit of Commission processing, tower owners, tenant licensees, and the public. In addition, Motorola recommends the adoption of transition policies in order to protect incumbent tower owners and licensees from any adverse effects resulting from their supplying accurate tower location data to the Commission. Finally, Motorola suggests that this proceeding be coordinated with the Commission's currently pending forfeiture proceeding.

Respectfully submitted,

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Dated: March 21, 1995

I. SUMMARY

Motorola generally supports the Commission's proposals to streamline its antenna structure clearance procedure and revise Part 17 of its rules, and specifically applauds the Commission's efforts to ease the regulatory burden on tower owners and tenant licensees. At the same time, Motorola believes that the Commission's proposals for regulatory streamlining can be further improved, and Motorola offers some specific recommendations to achieve that result. First, Motorola strongly agrees with the Commission's proposal that registration only be required for towers that require notification to the Federal Aviation Administration ("FAA"). If the Commission expands its registration requirements to include all antenna structures in the United States, the administrative burden on both the Commission and tower owners cannot be justified.

Second, Motorola would like to see the Commission ease the regulatory burdens placed on tower owners and improve the quality of its tower siting data by:

- (a) Modifying Form 854;
- (b) Requiring tower registrants periodically to renew their registrations;
- (c) Requiring a notification when tower construction is completed;
- (d) Making electronic registration and notification available;
- (e) Setting regulatory fees at a reasonable level; and
- (f) Providing all tower registrants with a copy of the FAA Advisory Circulars.

Similarly, the Commission could ease the regulatory burden on licensees if it:

- (a) Required licensees to provide only a tower registration number with their application, rather than being required to provide a copy of the entire tower registration form; and
- (b) Undertook to process radio license applications as far as possible until a pending tower registration application is granted.

Third, Motorola is concerned that, unless the Commission carefully plans the transition from the old to the new tower registration regimes, the new rules will have unintended and adverse side effects on incumbent licensees. Licensees who indicate that their transmitters have corrected geographical coordinates might find themselves to be the recipients of forfeitures or otherwise suffering adverse effects under applicable regulatory policies. Motorola urges the Commission to plan for these effects, and to provide an amnesty period and other transition steps.

Finally, Motorola requests that the Commission coordinate the policies adopted in this proceeding with the forfeiture policies. Such coordination is necessary to ensure that adoption of tower owner obligations are reflected in the forfeiture guidelines. In addition, where licensees are held responsible for a forfeiture in lieu of the owner, such licensees should only have to pay a total forfeiture amount equal to the amount that otherwise would be imposed on the single tower owner.

II. MOTOROLA SUPPORTS THE CONCEPT OF A TOWER REGISTRATION PROGRAM

In the above-captioned *Notice*,¹ the Commission proposes to streamline its antenna structure clearance process by replacing the current procedures, which apply to licensees and permittees, with a uniform registration process for structure owners. In addition, the Commission proposes to update and revise Part 17 of its rules to cross-reference the FAA's most recent tower marking regulations. Finally, the Commission proposes to revise all applicable sections of its rules in order to make them compatible with tower owners' new registration and marking responsibilities.

Under the streamlined clearance process proposed in the *Notice*, the antenna structure owner will be primarily responsible for: (1) registering the antenna structure with the Commission; (2) maintaining the painting and lighting of the structure in accordance with the Commission's Rules; (3) notifying the Commission of any changes in height, coordinates, ownership, painting, or lighting of the structure; and (4) notifying the Commission upon dismantling the structure.² In order to initially

¹ *In the Matter of Streamlining the Commission's Antenna Structure Clearance Procedure and Revision of Part 17 of the Commission's Rules Concerning Construction, Marking, and Lighting of Antenna Structures*, WT Docket No. 95-5 (Jan. 20, 1995) [hereinafter *Notice*].

² *Id.* at ¶ 7.

register a new or existing tower or inform the Commission of a modification to an existing tower, the owner will be required to fill out a revised FCC Form 854.³

In addition, the Commission proposes to update Part 17 of its rules in order to reflect the fact that it usually relies on the FAA's determination as to whether an antenna structure is a hazard to aeronautical navigation, and, if so, how to paint and/or light the structure. Therefore, the new Part 17 will incorporate by reference the recommendations found in FAA Advisory Circulars AC 70/7460-1H, August 1991, and AC 150/5345-43D, July 1988.⁴ Such incorporation by reference eliminates the need for the Commission to identify changes in the Circulars, interpret such changes, and revise Part 17 accordingly. Because the requirements found in these FAA Circulars differ from the current Part 17, the *Notice* proposes that the present painting and lighting requirements of existing structures be grandfathered for the next ten years.⁵

Finally, the Commission proposes to revise all applicable parts of its rules to clarify that structure owners are primarily responsible for compliance with the Commission's painting and lighting requirements. The revisions state that the Commission will first look to antenna structure owners to ensure that their structures are in compliance with the requirements of the newly revised Part 17. Only in cases

³ *Id.* at ¶¶ 9-10.

⁴ *Id.* at ¶ 18.

⁵ *Id.* at ¶ 19.

where reliance on the tower owner is ineffective will the Commission look to tenant licensees and permittees to assure compliance.⁶

Motorola supports the adoption of a tower registration program in the basic form proposed by the Commission. As recognized in the *Notice*, this revised procedure should benefit the public at large, tower owners, licensees, and applicants for licenses, as well as the Commission's fulfillment of various obligations relating to application processing and enforcement. The public at large will benefit from the fact that the proposed rules will increase air traffic safety by making the Commission's tower lighting and marking rules more comprehensible, thereby leading to more effective compliance. Also, as noted by the Commission, "making antenna structure data available to both the federal government and the public will make it easier to provide aviators with accurate and timely information regarding new or dismantled antenna structures."⁷

A registration program covering antennas subject to FAA notification should also benefit the tower owners, as compared to the process now in place. When the tower owner has the direct responsibility for registering the facility, it can ensure the correctness of all information and in turn convey that data to the licensee tenants. The owner also will directly receive from the Commission information on appropriate marking and lighting requirements and its other obligations, thus permitting the owner

⁶ *Id.* at ¶ 21.

⁷ *Id.* at ¶ 16.

to better comply with applicable standards. Similarly, Commission correspondence concerning the tower can be directed to the entity that can take appropriate responsive action.

Licensees and radio license applicants also should realize substantial benefits. Initially, rather than being required to obtain or calculate the physical data (*e.g.*, site coordinates, height, etc.) for a leased tower, a licensee/applicant may rely on the information filed with the Commission by the tower owner. Moreover, as noted by the Commission, licensees no longer will be required to make filings to reflect certain types of changes in the tower facility -- those will be handled by a single submission from the tower owner. This improved level of accurate site information and the reduced number of filings will permit licensees to make more efficient use of their resources and ensure improved overall compliance with Commission tower-related requirements.

Finally, as the *Notice* recognizes, the Commission itself stands to reap a number of benefits from the proposed registration procedures. Initially, staff time devoted to application processing should decrease, since tower modifications will produce only a single filing by the owner and not multiple filings from the tenant licensees.⁸ The creation of a comprehensive data base listing all towers subject to FAA notification requirements should streamline application processing activities as well as enhance the

⁸ Motorola expects, however, that the transition to the new program and the establishment of the comprehensive data base will require an *increase* in staff resources during initial implementation of the program.

Commission's enforcement efforts. More accurate information on specific site coordinates likewise should enhance the processing and enforcement functions.

Overall, an effective, streamlined tower registration program promises significant benefits and improvements for all affected entities. These beneficial results clearly support adoption of a tower registration program.

III. REGISTRATION SHOULD BE REQUIRED ONLY WITH RESPECT TO TOWERS SUBJECT TO FAA NOTIFICATION

Motorola agrees with the proposal contained in the *Notice* that registration should be mandated only for those structures requiring FAA notification.⁹ In initiating this proceeding, one of the Commission's stated goals was to streamline and simplify the antenna registration process. As pointed out in the *Notice*, of the approximately 500,000 existing antenna structures in the United States, some 70,000 towers were subject to FAA notification prior to construction.¹⁰ Requiring all antenna structures to be registered with the Commission, a question posed by the *Notice*,¹¹ would run directly counter to the Commission's goal of regulatory simplification.

While there may in fact be a number of potential uses for a comprehensive national antenna registry, this is not the correct forum nor the correct time to establish

⁹ See *Notice* at ¶ 8.

¹⁰ *Id.* at ¶ 8.

¹¹ *Id.* at ¶ 16.

such a registry. Given that the Commission's goals in this proceeding are focused on enhancing aviation safety and reducing the regulatory burdens on tower owners and users, the Commission should continue to restrict its registration requirements to those structures requiring FAA notification. The enhanced burdens on the Commission, tower owners, and licensees simply cannot be justified at this time.

IV. THE REGISTRATION PROCEDURE MUST BE AS SIMPLE AND AS STREAMLINED AS POSSIBLE

While supporting many of the specific tower registration procedures suggested by the Commission in the *Notice*, Motorola believes that certain concepts and filing mechanisms can be further improved. As explained below, these suggested improvements should lead to an even greater simplification of the registration process for both tower owners and radio station licensees, and give the Commission earlier access to more accurate tower location data. Specifically, tower owners would feel an easing of their regulatory burden, and the Commission would improve the quality of its tower siting data, if:

- Form 854 is modified;
- Tower registrants are required periodically to renew their registrations;
- Tower owners must notify the Commission of completion of construction;
- Electronic registration and construction notification is available;
- Regulatory fees are set at a reasonable level in accordance with costs imposed; and

- The Commission provides all registrants, concurrently with the assignment of the registration number, a copy of the current versions of the FAA Advisory Circulars describing the obstruction making and lighting requirements.

First, the Commission appears to have sought to make Form 854 as simple as possible while requesting the data needed to ensure compliance with the FAA and FCC rules. The Form 854 could be modified, however, to request whether the proposed tower construction involves any action that may have a significant environmental effect under Section 1.1307 of the Commission's Rules.¹² The tower owner's response would provide the basis for the Commission to ensure its compliance with the National Environmental Policy Act. In addition, radio station licensees and applicants should be entitled to rely on the tower owner's representations with respect to identification of facilities falling within or beyond the scope of Section 1.1307(a).¹³

Second, in order to ensure the integrity of the tower data base records, the Commission should require tower registrants to renew their registrations every ten years.¹⁴ Although registrants would be required to inform the Commission on Form 854 when they dismantle a tower, it is reasonable to expect that some tower owners will fail to do so (especially if there is a filing fee involved). Periodic re-registration

¹² See Notice at ¶ 16(h).

¹³ Licensees and applicants obviously would have to address separately Section 1.1307(b) concerning radiofrequency radiation.

¹⁴ See Notice at ¶ 16(d).

or renewal will provide the Commission with a valuable backstop concerning the continuing existence of towers.

Third, Motorola believes that the public interest will best be served by requiring tower registrants to notify the Commission when construction of a tower has been completed. Such notification could be made in a simple letter format or on a new, simple form, so as not to impose any substantial burden on tower owners or the Commission. Requiring such notifications will permit the Commission to purge from its data base records on towers that for some reason are not constructed -- thus improving the integrity and value of the data base.

Fourth, the Commission should seek to implement electronic registration for tower owners, as well as electronic notification of completion of construction. Initially, electronic registration will provide the Commission with expedited access to tower height and location data, which should enhance air safety. Electronic registration also should speed the processing of both tower registrations and radio license applications. This process thus should reduce the costs and consumption of resources on the part of licensees, applicants, and the Commission staff.

Fifth, Motorola recognizes the likely inevitability of some form of registration fee.¹⁵ The Commission should seek to ensure that the fee level is reasonable and will not deter the filing of required tower registrations. Keeping the process as simple and

¹⁵ See *id.* at ¶ 16(e).

direct as possible should minimize the processing costs, which in turn should permit the Commission to control the amount of the registration fee.

Finally, when the Commission issues a tower registration number to a tower owner, it should also forward a copy of the FAA's Advisory Circulars on antenna marking and lighting. This will help to ensure compliance with applicable requirements, and will serve to further unite the FAA/FCC requirements.

The tower registration/licensing process could similarly be simplified and streamlined for radio station licensees, yet still be fully effective, if the Commission would make two adjustments to its proposed rules. Initially, licensees should be required to provide only the tower registration number with their application, rather than being required to provide a copy of the entire Form 854 tower registration filing. The tower registration number should provide access to all information about the facility as contained in the data base. It thus is unnecessary to require applicants to provide a copy of the Form 854 when filing for a radio license. Rather, the applicant should be required to give only the tower registration number and provide any information specific to the particular antenna and transmitter.¹⁶ Submission of an unnecessary copy of the Form 854 would compound the burden on applicants as well as the Commission staff, and undoubtedly would create confusion that otherwise could be avoided.

¹⁶ Where an applicant proposes a tower for which the registration has not yet been issued, then the applicant should include a copy of the pending Form 854.

In addition, the Commission appears to suggest that it will not even begin to process radio licenses applications involving a pending tower registration until the registration has been granted and the information has been provided to the respective licensing bureau.¹⁷ Because such a process would unnecessarily delay Commission action on applications, Motorola instead suggests the Commission adopt one of the following two alternatives where a new tower is the subject of a pending registration request. As one option, the Commission could proceed with the processing of the radio license application, and issue a conditional license tied to grant of the registration for the tower. As another option, the Commission could otherwise process the application, but rather than making a conditional grant of the license, simply delay issuing the license until the tower registration number is forwarded by the applicant. Upon receipt of that information, the license could be promptly granted. Either solution would ensure that a new source of delay is not introduced into Commission action on applications.¹⁸

¹⁷ See Notice at ¶ 13.

¹⁸ This issue also must be addressed in the context of registering existing towers. Because the registration of existing towers may be delayed due to the sheer volume of registration filings and potentially limited staff resources, Commission action on radio license applications proposing to use a previously constructed tower should not be delayed to await the registration number. To do otherwise would unfairly penalize applicants with delays resulting from the Commission's adoption of a new regulatory scheme.

V. THE TRANSITION PROCESS MUST BE CAREFULLY PLANNED

In making the transition from the old to the new tower registration regimes, the Commission should institute procedures that encourage tower owners to provide full and accurate information concerning a tower's height and location. Because historically there have been a number of different methods used to identify a tower site, the Commission must recognize that, in some circumstances, existing tower site location information may be erroneous due to no fault of the tower owner or the tenant licensees. To ensure that, where appropriate, the collection of more accurate but inconsistent tower location data is not jeopardized by owner and licensee concerns about potential forfeitures and other adverse regulatory effects, Motorola urges the Commission to develop in advance a transition scheme that includes an amnesty plan whereby incumbent tower owners and licensees are not "punished" for the provision of newer and more accurate site data.

Preliminarily, Motorola has heard of anecdotal information indicating that a great deal of the extant tower location data is inaccurate. Such inaccuracies have a number of sources, and often have been submitted in good faith. For example, the original tower owner or initial licensee may have made an error in the site coordinates that in turn is carried through by subsequent licensees. Erroneous information may be unknowingly reflected in old FCC or FAA files and then used by licensees. Various methods of calculating site coordinates provide differing levels of accuracy.

Correcting data in those cases where there are errors poses a number of regulatory concerns. Initially, licensees must be concerned with the possible forfeiture implications of having identified an erroneous location as the site of its operations. Moreover, a number of Commission policies with regard to service-specific requirements are implicated by the reporting of corrected site information.

For example, the protected coverage area of cellular licensees is based on the transmitter location. Correction of cell site data could shrink an authorized coverage area as defined on paper and as protected by the Part 22 rules. This has ripple effects for the definition of unserved areas as well.

Similarly, the finder's preference policy could be affected by tower site corrections. Under the finder's preference program, "a dispositive licensing preference" is given "to persons who provide [the Commission] with information about licensees that are not in compliance with [the Commission's] construction and operational rules."¹⁹ Having already come under attack by individuals who make a business of license hunting, Motorola is concerned that these same individuals will use new, refined location data as a basis for filing a new round of finder's preference requests. The Commission must ensure that such requests are denied as a matter of course because the granting of even one such request will send a strong signal to tower owners that, in those circumstances where incorrect data inadvertently is on file with

¹⁹ *Amendment of Parts 1 and 90 of the Commission's Rules Concerning the Construction, Licensing, and Operation of Private Land Mobile Radio Stations*, 6 FCC Rcd 7297, 7297 (1991).

the Commission, they risk their licenses by providing fully accurate information in registering already existing facilities. Further, granting such finder's preference requests runs contrary to the purposes of a program that was established to expedite the reassignment of channels that are not being utilized,²⁰ not to punish licensees for providing accurate data at the Commission's request.

The issue of SMR transmitter spacing is similar to that of finder's preferences in that provision of accurate location data by a licensee might be highly prejudicial to that licensee's interests. According to Part 90 of the Commission's Rules, 800 MHz SMR transmitters must normally be separated by 70 miles,²¹ while under special circumstances they can be "short-sited" or spaced more closely.²² Because there are an ever increasing number of SMR transmitters, it has become very difficult to site new transmitters while maintaining the required 70 mile separation from existing transmitters. Unless transition rules are implemented, the Commission's proposal to update its tower location data will cause problems where corrected location data indicates that the licensee is in fact located more closely to other licensees than permitted by Part 90.

As the aforementioned discussion makes clear, updating the Commission's tower siting information with accurate location data will have a significant effect on other

²⁰ *Amendment of Parts 1 and 90*, 6 FCC Rcd at 7302.

²¹ 47 C.F.R. § 90.621(b).

²² 47 C.F.R. § 90.621(b)(6).

Commission policies. In order to minimize the negative impact of updating this information, the Commission should introduce a transition plan along with its new tower registration rules. Foremost among the features of this plan should be an amnesty program for tower owners and their tenant licensees who report tower location data that differs from the old data. Under this amnesty program, incumbent licensees should be protected from any forfeitures resulting from the correction in data. Similarly, the Commission should identify other policies, rights, and obligations that could be altered or otherwise affected by the submission of updated tower data, and then take steps necessary to protect licensees from undue consequences resulting from the registration process.

Motorola concurs with the Commission that "[t]he implementation process must provide a reasonable speed of service to our customers while maintaining a simple registration scheme."²³ As the Commission has noted, registration for existing towers must be reasonably transitioned so as not to overburden either tower owners or Commission staff. Nonetheless, implementation of registration for established towers should proceed promptly in order to afford the numerous benefits associated with the program at the earliest possible date.

²³ Notice at ¶ 11.

VI. THIS PROCEEDING MUST BE COORDINATED WITH THE FORFEITURE POLICY STATEMENT PROCEEDING

As a general matter, the Commission should coordinate the rules promulgated in this proceeding with the rules promulgated in the forfeiture policy statement proceeding.²⁴ More specifically, the Commission should make it clear that tower owners are the primary entities responsible for complying with the marking and lighting directives. Therefore, any failure to comply with such requirements should result in a forfeiture by the tower owner, not individual licensees leasing space on the tower. In the event that the tower owner cannot be located, Motorola recognizes that the forfeiture might be imposed on the licensee tenants. However, such a forfeiture should not exceed in value the total forfeiture which would have been imposed on the tower owner.

VII. CONCLUSION

Motorola commends the Commission's tower registration proposals. The program, as modified consistent with these comments, promises improved air safety, as well as expedited action on radio license applications and reduced burdens imposed on licensees as well as Commission staff. Adoption of such proposals clearly furthers the public interest.

²⁴ *In the Matter of the Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules To Incorporate the Forfeiture Guidelines*, CI Docket No. 95-6 (Feb. 10, 1995).